COMPLAINT OF FAILURE TO ACCOMMODATE RE ATTORNEY JILL CLARK

TO: United States District Court, District of Minnesota via Clerk of Court

C: Eighth Circuit Court of Appeals via Clerk of Court; cases as status reports

From: Jill Clark, Jill Clark, LLC (jill@jillclarkllc.com) Date: November 8, 2012

I have received your letter in response to my October 18, 2012 request for accommodation. I must, respectfully, disagree with its content as well as the process.

I respect that federal judges make their own decisions about *cases*. However, I do not agree that a request to a public entity for an accommodation is about a "case." If I were in a wheel chair and needing to have a ramp installed to be able to reach a courtroom, that would not be about the *case*. That would be an issue for the *entity*. For many reasons, it is our position that attorney requests for medical leave should be the responsibility of the entity.

I did not ask to be the front-runner on this issue. I was thrust into this position. However, I have significant legal experience (I have advised and litigated disability issues since the late eighties) and now have significant experience as a lawyer requesting accommodation.

As I stated, expecting an attorney who cannot work per doctor's orders to draft, file, track, and pursue continuance motions is not accommodation. It is *work*. This may be what courts have done historically. But as I stated in my 10/18 memo, the demand that my firm file motions for continuances lengthened my recovery time. That is *not* accommodation.

Further, continuance motions are an adversarial process. That is not appropriate for accommodation requests. Imagine if an employer let co-workers weigh in on whether the person who sits next to them should be given a leave of absence to recover from surgery. A court reviewing that case would likely have a problem with that. Why would we let opposing counsel weigh in, simply because the services provided by courts include cases? For me, the stress of the adversarial process (particularly since some opposing counsel take the opportunity to lambaste me, to make outrageous allegations about me which they know my status will prevent me from countering, and judges have let that happen) is specifically what I need to avoid.

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I am not persuaded by the notion that opposing counsel has the right to weigh in because the case could be delayed.

- In a §1983 case I filed in 2007, the law weighed heavily in favor of a stay until the state criminal case was over, even though it had been filed second. The law dictates that a plaintiff has little to say about that. The stay lasted years.
- In a state case, one of the parties claimed to be overseas in the military service. He was granted an *ex parte* stay of the proceedings.

In other words, the law does determine that cases be delayed to further an important interest. Congress has decided the RA is an important purpose. Opposing counsel who claim they cannot bear delay should be told that compliance with the MHRA is required.

Further, forcing an attorney to file a *motion*, funneling legitimate requests for accommodation *by the entity* into the case itself, is a way of immunizing the courts from liability. (*See Schottel v. Young*, 8th Circuit No. 11-3292). If an employer took affirmative efforts to skirt the ADA, courts would no doubt have a problem with that.

I have a great deal more to say about why the "continuances" model did not work. I am requesting the District Court engage in a roundtable process with me. I represented an attorney who requested accommodation from a state court, we engaged in the roundtable process with an administrative person and an attorney for the courts, and it went well.

In my particular situation, I now know that I am suffering from events that occurred *in my workplace*: the justice system. It is appropriate that that workplace accommodate me. In particular, I need some time away from judges who have mistreated me, but I also, in all frankness, just need some time away from judges, courtrooms, deposition rooms, counsel, and the adversarial process. Why is that not doable for me?

Consider this: If a judge needed time off for medical leave due to the stresses of litigation, he would clear his calendar. No lawyer would have a say in that.

My October 18 memo stated I need time off from filing motions, and that doing so lengthened my recovery time. I asked for this Court to explain its process for requesting accommodation and complained the Clerk had not responded to my July memo. The response was to tell me to file more motions. And, shortly after I delivered that memo, the Chief Judge commenced a disciplinary case against me. Knowing I was on medical leave – either expecting me to do more work while on leave, or knowing that I cannot meet deadlines or appear. I am complaining about that conduct, which is the antithesis of accommodation.